



City of Albuquerque

Legislative File Number O-06-2 (version 2)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

**Loan Agreement with the New Mexico Department of Transportation for the Coors
Boulevard and Interstate 40 Project (Sanchez, Benton)**

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

**AUTHORIZING THE CITY OF ALBUQUERQUE, NEW MEXICO TO ENTER INTO A
LOAN AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF
TRANSPORTATION (STATE INFRASTRUCTURE BANK) FOR THE PURPOSE OF
OBTAINING HIGHWAY PROJECT LOAN FUNDS FROM THE STATE
INFRASTRUCTURE BANK IN THE PRINCIPAL AMOUNT OF \$7,846,153;
AUTHORIZING THE CITY OF ALBUQUERQUE, NEW MEXICO TO ENTER INTO A
COOPERATIVE PROJECT AGREEMENT FOR INTERSTATE 40 / COORS
BOULEVARD INTERCHANGE AND CONSTRUCTION IMPROVEMENTS WITH THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION; DESIGNATING THE USE OF
THE LOAN FUNDS FOR THE PURPOSE OF FINANCING A PROJECT AT THE
INTERSTATE 40 / COORS BOULEVARD INTERCHANGE; DECLARING THE
NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE
AND COLLECTIBLE SOLELY FROM CERTAIN FEDERAL FUNDS; PRESCRIBING
OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFORE.**

**WHEREAS, the capitalized terms used in the following preambles are
defined in Section 1 of the Ordinance, unless the context requires otherwise; and**

**WHEREAS, the City is a legally and regularly created, established, organized
and existing municipal corporation under the general laws of the State and its City**

Charter as last amended; and

WHEREAS, the City is operating as a home rule City under a Charter adopted on June 29, 1971, as amended, pursuant to Article X, Section 6 of the New Mexico Constitution; and

WHEREAS, the Department and the City agree that the City shall engage in comprehensive, continuing and cooperative long range planning and encouragement to support and expand transportation and economic development; and

WHEREAS, the present highway configuration at the Project site is insufficient and inadequate to meet the needs of the City and its residents; and

WHEREAS, the Metropolitan Transportation Board of the Mid Region Council of Governments of New Mexico passed Resolution R-04-11 MTB on May 13, 2004, authorizing and supporting the Project; and

WHEREAS, pursuant to Section 350 of the National Highway System Designation Act of 1995 (the “Federal Act”), the Department has applied for and created a revolving fund designated as an “infrastructure bank” under the Federal Act; and

WHEREAS, the City and the Department are in agreement that it is necessary to provide the means and methods to effectuate the disbursement of funds to the Project Nos. AC-GRIP-(HPP-IM-10-NH)-40-3(144)155, and ST-040-3 (240)155, Control No. G1013; and

WHEREAS, the Department shall act as lead for the Project and the City has agreed to provide \$12,000,000 of the required estimated \$92,000,000 in funding and identify remaining balances through the Mid Region Council of Governments; and

WHEREAS, the City and the Department desire to provide for the consolidation of the various funding sources for the Project into the Cooperative Project Agreement for the funding of construction and construction supervision of the Project; and

WHEREAS, the City desires to obtain a loan of money from the State Infrastructure Bank through the Department to finance or refinance a portion of the

Cost of the Project; and

WHEREAS, the City expects to receive certain federal funds for the Project; and

WHEREAS, the Department has determined to share costs of the Project with the City by loaning certain sums on deposit in the State Infrastructure Bank to the City; and

WHEREAS, the Department and the City have the authority pursuant to Section 67-3-28 NMSA 1978 to enter into cooperative agreements with each other to share the costs of highway projects; and

WHEREAS, the City has notified the State of its intention to apply to the State Infrastructure Bank for a loan to finance a portion of the Cost of the Project, and the Secretary of the Department has approved the City's intention to apply for a loan from available funds of the State Infrastructure Bank; provided as Attachment A, in an amount not to exceed the amount of the loan commitment set forth in the Loan Agreement to finance a portion of the Cost of the Project; and

WHEREAS, the City will pledge the Pledged Revenues as the sole source of payment of the Loan Agreement; and

WHEREAS, the Loan Agreement will be payable solely from Pledged Revenues and therefore the lien on the Pledged Revenues for the payment of the Loan Agreement may and shall be prior and superior to any other claim of lien thereon; and

WHEREAS, the Council has determined that it is in the best interest of the City to accept and enter into the Loan Agreement and the Cooperative Project Agreement with the Department.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. Definitions.

A. As used in the Ordinance, the following terms shall, for all purposes, have the meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms

of the terms defined):

“Act” means Section 67-3-28 NMSA 1978, as amended and as hereafter amended, the City Charter and enactments of the Council relating to the Loan Agreement made by resolution or ordinance, including the Ordinance, and the powers of the City as a home rule city under authority given by the Constitution of the State and the City Charter.

“Authorized Officer” means the City's Mayor, Chief Administrative Officer, Director of Finance and Management, Treasurer, Department of Municipal Development - Transportation Division Manager, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time. The certificate may designate one or more alternates.

“City” means the City of Albuquerque, in the County of Bernalillo and State of New Mexico.

“Cooperative Project Agreement” means the form of the cooperative project agreement to be dated the date of the execution thereof between the City and the Department to provide for the consolidation of the various funding sources into one agreement for the funding of construction and construction supervision of the Project.

“Council” means the Council (the governing body) of the City.

“Cost” means those costs that are reasonable, necessary and allocable to the Project and are permitted by generally accepted accounting principles to be costs of the Project, other than costs of planning, environmental documentation, water rights or mitigation costs.

“Department” means the New Mexico Department of Transportation.

“Fiscal Year” means the twelve-month period commencing on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period which the City or other appropriate authority hereafter may establish as the fiscal year for the City.

“Herein”, “hereby”, “hereunder”, “hereof”, “hereinbefore” and “hereafter” refer to the Ordinance and not solely to the particular portion of the Ordinance in

which such word is used.

“Loan” means the loan of money from the State Infrastructure Bank made by the Department to the City to finance or refinance a portion of the Cost of the Project pursuant to the Loan Agreement. For all purposes of the Loan Agreement, the amount of the Loan at any time shall be the amount of the loan commitment set forth in Attachment A attached to and made part of the Loan Agreement (which amount, equals the amount actually deposited in the Project Account), less any amount of such principal as has been repaid by the City under the Loan Agreement.

“Loan Agreement” means the form of the loan agreement attached to the Ordinance as Attachment A, to be dated the date of the execution thereof between the City and the Department pursuant to which funds will be loaned to the City by the State Infrastructure Bank to construct the Project and pay eligible Costs relating thereto, as amended from time to time.

“Loan Closing” means the date upon which the City shall issue and deliver the Loan Agreement and the Department shall deposit the Loan Proceeds into the Project Account.

“Loan Proceeds” means the money committed to the Loan as provided in Attachment A to the Loan Agreement.

“Loan Repayment” means the payments payable by the City pursuant to Section 4.03 of the Loan Agreement.

“NMSA” means New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Ordinance” means this ordinance, as amended or supplemented from time to time.

“Pledged Revenues” means those federal funds which may be received by the City from time to time and designated the federal Surface Transportation Program Urbanized 2000 Population and federal Congestion Management Air Quality - Flexible funds.

“Project” means developing and contracting a free flow interchange at

Interstate 40 and Coors Boulevard between Hanover Road and Quail Road in Albuquerque, New Mexico.

“Project Account” means the I-40 / Coors Boulevard Intersection - Albuquerque SIB Loan Project (Cash account) in the State Road Fund for the sole use of paying Project Costs.

“Project Completion Date” means the date of completion of the Project as evidenced by a certificate signed by an authorized representative of the Department and an Authorized Officer.

“State” means the State of New Mexico.

“State Infrastructure Bank” means the State Infrastructure Bank, a separate fund created by the Department and held by the State Treasurer, established pursuant to Section 350 of the National Highway System Designation Act of 1995.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Council, the officers and employees of the City, directed toward the Loan Agreement and the Cooperative Project Account, is hereby ratified, approved and confirmed.

Section 3. Findings. The Council hereby declares that it has considered all necessary and relevant information and data and hereby makes the following findings:

A. The execution and delivery of the Loan Agreement pursuant to the Act to provide funds to finance a portion of the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

B. The City will finance a portion of the Project.

C. The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the Cost of the Project.

Section 4. Authorization of Project. The acquisition of the Project and payment of eligible Costs from proceeds of the Loan Agreement for a portion of the Project is hereby authorized. The portion of the Project expected to be paid from proceeds of the Loan Agreement will not exceed \$8,454,000 (including interest), excluding any Cost of the Project to be paid from any source other than

the proceeds of the Loan Agreement.

Section 5. Authorization of Loan Agreement and Cooperative Project Agreement.

A. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City and acquiring the Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver, and the City is hereby authorized to execute and deliver the Cooperative Project Agreement and the City is hereby authorized to execute and deliver the Loan Agreement to be payable and collectible solely from the Pledged Revenues. The Department has agreed to disburse the proceeds of the Loan Agreement from the State Infrastructure Bank into the Project Account. The Department may use the proceeds of the Loan Agreement in the Project Account at any time to pay Costs of the Project. The aggregate principal amount of the Loan shall be \$7,846,153 without the adoption of another ordinance by the Council, and the annual interest rate on that principal amount shall be one and one half percent (1.5%) per annum. The final maturity date on the Loan shall be as set forth in the Loan Agreement, but not later than June 30, 2013. The Loan Agreement shall be repaid in accordance with the schedule set forth in the Loan Agreement, as the same may be amended or modified. Such payments shall be made within fifteen (15) days after federal funds are authorized, encumbered and disbursed by the Department to the City.

B. The form of the Loan Agreement and the Cooperative Project Agreement are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Loan Agreement and the Cooperative Project Agreement, and any extensions of or amendments to either such document with such changes therein as are not inconsistent with the Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this Section. The City Clerk is authorized to affix the seal of the City and to attest the Loan Agreement, the

Cooperative Project Agreement and other documents pertaining to the Loan Agreement and the Cooperative Project Agreement if required.

C. From and after the date of the initial issuance and delivery of the Loan Agreement and the Cooperative Project Agreement, Authorized Officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Cooperative Project Agreement.

Section 6. Special Limited Obligations. The Loan Agreement and all payments of principal and interest thereon shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues. The Department may not look to any general or other municipal fund for the payment of the principal of or interest on the Loan Agreement, except the designated funds pledged therefor. The Loan Agreement shall not constitute an indebtedness or a debt within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and shall recite that they are payable and collectible solely out of the Pledged Revenues, the income from which is so pledged, and that the holder of the Loan Agreement may not look to any general or other municipal fund for the payment of the principal of and interest on the Loan Agreement.

Section 7. Operation of Project. The Project will be operated and maintained in accordance with the terms of the Cooperative Project Agreement.

Section 8. Use of Proceeds; Appropriation. Funds shall be disbursed pursuant to the Loan Agreement from the State Infrastructure Bank into the Project Account. The Department may use the proceeds of the Loan Agreement in the Project Account at any time to advance to the City or otherwise pay the Costs of the Project in accordance with the terms of the Loan Agreement. All \$8,454,000 of funds disbursed pursuant to the Loan Agreement from the Project Account to the City shall be credited to a program account to be established under the City's Operating Grants Fund 265 and used to pay, and are hereby appropriated for the

payment of, Costs of the Project. In particular, the following funds anticipated to be received from the federal government shall be appropriated and are expected to be used to repay the Loan Agreement: (a) in fiscal year 2006, \$429,000 from the Surface Transportation Program Urbanized (STPU); (b) in fiscal year 2007, \$300,000 in Congestion Management Air Quality (CMAQ); (c) in fiscal year 2007, \$925,000 in STPU; (d) in fiscal year 2009, \$1,150,000 in STPU; (e) in fiscal year 2010 to 2013, \$1,412,500 each year in STPU. Actual amounts to be appropriated shall correspond to the actual amounts of federal funds received by the City.

Section 9. **Lien of Loan Agreement.** The Loan Agreement shall constitute an irrevocable first lien upon the Pledged Revenues. The City hereby pledges and grants a security interest in the Pledged Revenues for the payment of the Loan and any other amounts owed, by the City to the Department pursuant to the Loan Agreement.

Section 10. **Protective Covenants.** The City shall make protective covenants relating to the Loan as set forth in the Loan Agreement.

Section 11. **Events of Default.** The City shall designate “Events of Default” relating to the Loan as set forth in the Loan Agreement.

Section 12. **Defeasance.** When all obligations under the Loan Agreement have been paid, the pledge, lien, and all other obligations of the City under the Ordinance shall be discharged and the Loan Agreement shall no longer be deemed to be outstanding. The City may prepay the Loan Repayments, in whole or in part, upon prior written notice of not less than thirty (30) days to the Department.

Section 13. **Amendment of Ordinance.** This Ordinance may be amended with the consent of the Department.

Section 14. **Ordinance Irrepealable.** After the Loan Agreement and Cooperative Project Agreement have been executed and delivered, the Ordinance shall be and remain irrepealable until the Loan has been fully paid, canceled and discharged, as provided in the Ordinance.

Section 15. **Severability Clause.** If any section, paragraph, clause or

provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

Section 16. **Repealer Clause**. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 17. **COMPILATION**. Sections 1, 2 and 3 of the Ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico.

Section 18. **EFFECTIVE DATE**. This ordinance shall take effect five days after publication by title and general summary.

